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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 CHRISTOPHER L. HEBARD, an individual, and
12 COTO SETTLEMENT, a corporation,

13 Plaintiff,

14 v.

15 IAN EISENBERG, an individual, and OLYMPIC
16 COMMUNICATIONS, INC., a corporation,

17 Defendants.

CASE NO. C08-125RSM

ORDER DENYING DEFENDANTS'
MOTION FOR ATTORNEYS FEES

18 This matter is before the Court for consideration of defendants' motion for attorneys fees and
19 costs. Dkt. # 64. The motion is brought pursuant to RCW 4.84.185, which provides:

20 In any civil action, the court having jurisdiction may, upon written findings by the judge that
21 the action . . . was frivolous and advanced without reasonable cause, require the nonprevailing
22 party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred
23 in opposing such action . . . This determination shall be made upon motion by the prevailing
24 party after a voluntary or involuntary order of dismissal, order on summary judgment, final
25 judgment after trial, or other final order terminating the action as to the prevailing party. The
26 judge shall consider all evidence presented at the time of the motion to determine whether the
27 position of the nonprevailing party was frivolous and advanced without reasonable cause. In
28 no event may such motion be filed more than thirty days after entry of the order.

RCW 4.84.185. The statute grants the Court discretion to award attorneys' fees on actions brought
under Washington State law, when the Court finds that the action was frivolous and advanced without
reasonable cause. *See, e.g., Skimming v. Boxer*, 119 Wash. App. 748, 754 (Div. III, 2004).

1 This action was dismissed upon a Rule 12(b)(6) motion for failure to state a claim, after the Court
2 determined that it was barred by the applicable statute of limitations. Dk.t # 56. In the dismissal Order,
3 the Court characterized plaintiff's assertions as "retrospective rationalizations," but did not find that the
4 action was either frivolous or "advanced without reasonable cause." *Id.* The Court declines to do so
5 now.

6 Accordingly, defendants' motion for attorneys' fees pursuant to RCW 4.84.185 is DENIED.
7 Defendants may apply separately to the Clerk of Court for taxation of costs pursuant to F.R.Civ.Proc.
8 54(d)(1).

9 DATED this 6 Day of January 2009.

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11 RICARDO S. MARTINEZ
12 UNITED STATES DISTRICT JUDGE
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